

§ 4290.230

7 CFR Ch. XLII (1–1–06 Edition)

(ii) Has a viable business plan reasonably projecting profitable operations; and

(iii) Has a reasonable timetable for achieving Regulatory Capital of at least \$10,000,000.

(2) A RBIC licensed under this exception is not eligible to receive Leverage until it has complied with paragraph (a) of this section.

§ 4290.230 Private Capital for RBICs.

(a) *General.* Private Capital means the contributed capital of a RBIC, plus unfunded binding commitments by Institutional Investors (including commitments evidenced by a promissory note) to contribute capital to a RBIC.

(b) *Contributed capital.* For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate RBIC, the members' contributed capital of a LLC RBIC, or the partners' contributed capital of a Partnership RBIC, in each case subject to the limitations in paragraph (c) of this section.

(c) *Exclusions from Private Capital.* Private Capital does not include:

(1) Funds borrowed by an Applicant or a RBIC from any source.

(2) Funds obtained through the issuance of Leverage.

(3) Funds obtained directly or indirectly from the Federal government or any State (including by a political subdivision, agency or instrumentality of the Federal government or a State), except that the following categories of such funds are not excluded from Private Capital—

(i) Funds obtained directly or indirectly from the business revenues (excluding any governmental appropriation) of any federally-chartered or government-sponsored enterprise established prior to May 13, 2002;

(ii) Funds invested by an employee welfare benefit plan or pension plan; and

(iii) Qualified Non-private Funds in an amount not to exceed 33 percent of the total Private Capital of any Applicant or RBIC, *provided, however*, that in no event may any investor or investors of Qualified Non-private Funds have the power to control, directly or indirectly, the management, board of di-

rectors, general partners, or members of the RBIC.

(4) Any portion of an unfunded commitment from an Institutional Investor with a net worth of less than \$10 million that exceeds 10 percent of such Institutional Investor's net worth.

(5) An unfunded commitment from an investor if the Secretary determines that the collectibility of the commitment is questionable.

(d) *Non-cash capital contributions.* Capital contributions in a form other than cash are subject to the limitations in § 4290.240 of this part.

(e) *Contributions with borrowed funds.* You may not accept any capital contribution made with funds borrowed by a Person seeking to own an equity interest (whether direct or indirect, beneficial or of record) of at least 10 percent of your Private Capital. This exclusion does not apply if:

(1) Such Person's net worth is at least twice the amount borrowed; or

(2) The Secretary gives his or her prior written approval of the capital contribution.

§ 4290.240 Limitations on non-cash capital contributions in Private Capital.

Non-cash capital contributions to a RBIC or Applicant are included in Private Capital only if they are approved by the Secretary and they fall into one of the following categories:

(a) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States having a term of no more than one year.

(b) Services rendered or to be rendered to you, priced at no more than their fair market value.

(c) Other non-cash assets approved by the Secretary.

Subpart D—Application and Approval Process for RBIC Licensing

§ 4290.300 When and how to apply for a RBIC License.

(a) *Notice of Funds Availability ("NOFA").* The Secretary will publish a NOFA in the FEDERAL REGISTER advising potential applicants of the availability of funds for the RBIC program